IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-685

ROBERT J. LEHNHAUSEN,

Petitioner,

vs.

LAKE SHORE AUTO PARTS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF OF THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 49 Ill. 2d 137, 273 N.E. 2d 592 (1971).

JURISDICTION

The jurisdiction of this Court is invoked to review a final judgment of the Supreme Court of Illinois pursu-

ant to Title 28 U.S.C. § 1257(3). The decision of the court below was rendered on July 9, 1971. A petition for rehearing was denied on August 24, 1971. The petition for writ of certiorari was filed November 19, 1971, and granted April 3, 1972.

CONSTITUTIONAL PROVISION

Fourteenth Amendment to the United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTION PRESENTED FOR REVIEW

Whether a state constitutional provision which distinguishes between corporations and natural persons for the purpose of imposing an *ad valorem* tax on personal property violates the equal protection clause of the fourteenth amendment?

STATEMENT OF THE CASE

Article IX of the Illinois Constitution of 1870 granted to the state General Assembly the power to levy a tax

by valuation "so that every person and corporation shall pay a tax in proportion of his, her, or its property."[1]

On June 30, 1969, the Illinois Senate and House of Representatives concurred in the adoption of Senate Joint Resolution Number 30 providing for the submission to a referendum vote of Article IX-A, a proposed amendment to the Illinois Constitution of 1870.[2] Article IX-A

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1. Ill. Const. (1870), Art. IX, sect. 1 provides in its entirety:

§ 1. The General Assembly shall provide such revenue as may be needful, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion of his, her, or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor-dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall, from time to time, direct by general law, uniform as to the class upon which it operates."

2. The Illinois Constitution of 1970 was adopted at a special election December 15, 1970 and became generally effective July 1, 1971. Article IX, sect. 5 of the 1970 Constitution provides:

a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

reads "Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals." At the November 1970 election, the Illinois electorate adopted Article IX-A by a vote of between seven and eight to one.

Respondent Lake Shore Auto Parts Company, a corporation, filed a complaint in the Circuit Court of Cook County, Illinois on December 9, 1970 naming as parties defendant various county officials as well as the director of the Illinois Department of Local Government Affairs, the petitioner herein. The suit was instituted as a class action on behalf of Lake Shore and all other corporations and other non-individuals subject to personal property taxation. Respondent alleged that Article IX-A violated the fourteenth amendment by exempting "from ad valorem personal property taxation on and after January 1, 1971, all personal property owned by "individuals", while au-

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b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

c) On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article.

thorizing and requiring the continued ad valorem taxation of all personal property owned by entities other than "individuals". Respondent further alleged that Article IX-A effected an amendment of the Illinois Revenue Act of 1939 (Ill. Rev. Stat., 1969, Ch. 120, §§ 482 et seq.) by requiring the imposition of ad valorem taxes solely upon personal property owned by corporations and other non-individuals and requested declaratory and injunctive relief in the form of a holding that the Revenue Act as amended was unconstitutional and unenforceable as to the class represented by respondent.

All parties defendant disputed the respondent's conclusions of law but did not contest the factual allegations of respondent's complaint.

On March 30, 1971, Judge Dahl entered an order finding that Article IX-A amended the Revenue Act of Illinois and "That the Revenue Act of Illinois, as so amended by Article IX-A of the Illinois Constitution, deprives the plaintiff corporation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States: that said Revenue Act of Illinois, to the extent that it purports to impose personal property taxes with respect to the property owned by plaintiff, is therefore unconstitutional, void and of no effect whatsoever." Lehnhausen appealed to the Supreme Court of Illinois and Lake Shore cross appealed a portion of the order relating to the applicability of Article IX-A to personal property taxes assessed prior to January 1, 1971.

A petition for leave to file an original action in the Supreme Court of Illinois was filed with that court on May 10, 1971 by Eugene Maynard, a natural person owning non-business personal property, and by three school districts receiving revenue from the assessment and col-

lection of ad valorem personal property taxes. The petition alleged that the Maynard action was necessary to a proper determination of the issues in the Lake Shore appeal for two reasons: *Lake Shore* did not directly present the issue of the constitutionality of Article IX-A and second, Lake Shore Auto Parts Co. represented only one class of persons directly affected by Article IX-A. The parties defendant in the *Maynard* action are identical to those in *Lake Shore.*

On May 8, 1971, a class action was filed in the Circuit Court of Cook County, Illinois seeking an interpretation of Article IX-A. The parties plaintiff included Clemens K. Shapiro, a natural person owning personal property used for non-business purposes; Jerome Herman, a natural person conducting a business as sole proprietor; Guy and Eugene Ross, natural persons operating a partnership business which owns personal property; and M. Weil and Sons, Inc., a corporation owning property. The parties, representing themselves and all others similarly situated, asserted varying interpretations of Article IX-A. The parties defendant again are identical to those in *Lake Shore.*

Judge Donovan on May 28, 1971, entered an order in the *Shapiro* case holding that Article IX-A exempts from ad valorem property taxation only personal property held by natural persons for non-business purposes. The complaint was dismissed except as to the class of persons represented by Clemens Shapiro. All plaintiffs appealed from this order to the Supreme Court of Illinois.

These three actions—*Lake Shore, Maynard,* and *Shapiro* —were consolidated in the Supreme Court of Illinois which rendered its opinion on July 9, 1971. That court found that "the meaning of Article IX-A is that *ad valorem*

taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited." *Lake Shore Auto Parts* v. *Korzen,* 49 Ill. 2d 137, 148 (1971). The court then held that such a classification, which it found to be dependent solely upon the identity of the owner of property without reference to the nature of the property or the use to which it is put, was irrationally discriminatory and thus in violation of the fourteenth amendment. The court declared Article IX-A unconstitutional, and sustained the validity of Article IX of the 1870 Constitution and of the Revenue Act of 1939.

The Supreme Court of Illinois reversed the judgment in *Lake Shore* and remanded the case with directions to dismiss the complaint. The *Maynard* complaint was dismissed. In *Shapiro,* the judgment dismissing the complaint as to all plaintiffs other than Shapiro was affirmed and the judgment sustaining Shapiro's position was reversed and the case remanded to the trial court with directions to dismiss the complaint.

Lake Shore Auto Parts Company filed a notice of appeal with the Supreme Court of Illinois on November 4, 1971, following a denial by that court of petitions for rehearing filed by various parties to the litigation. Lake Shore subsequently filed with this Court its combined Jurisdictional Statement and petition for writ of certiorari to the Supreme Court of Illinois. Appellants urged the unconstitutionality under the fourteenth amendment of the Revenue Act of 1939. On April 3, 1972, this Court dismissed the appeal for want of jurisdiction and denied the petition for writ of certiorari. *Lake Shore Auto Parts Co.* v. *Korzen, et al.,* ——U.S.—— (1972) (Case No. 71-674)

On November 19, 1971, the petitioner herein filed with this Court a petition for writ of certiorari to the Supreme Court of Illinois seeking review of the decision in *Lake Shore Auto Parts Co.* v. *Korzen, supra. Lehnhausen* v. *Lake Shore Auto Parts Co.,* Case No. 71 685. Edward J. Barrett, Clerk of Cook County, filed a separate petition with this Court seeking a writ of certiorari to review the decision in the *Lake Shore* case on November 22, 1971. *Barrett* v. *Shapiro,* Case No. 71-691. The petitions in *Lehnhausen* and *Barrett* were granted and the cases consolidated by this Court on April 3, 1972.

ARGUMENT

I.

A CLASSIFICATION WHICH DISTINGUISHES CORPORATIONS FROM NATURAL PERSONS FOR THE PURPOSE OF ASSESSING A TAX BY VALUATION ON PERSONAL PROPERTY IS REASONABLE AND COMPORTS FULLY WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Article IX-A amending the Illinois Constitution of 1870 provides: "Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals." The Supreme Court of Illinois interpreted this amendment in *Lake Shore Auto Parts Company* v. *Korzen*, 49 Ill. 2d 137, 148 (1971) and stated:

> "We conclude that the meaning of Article IX-A is that *ad valorem* taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited."

That interpretation of the meaning of Article IX-A is controlling for the purpose of determining the issue raised herein. *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938); *Madden* v. *Commonwealth of Kentucky*, 309 U.S. 83 (1940). The issue raised is whether the equal protection clause requires corporations and natural persons to be treated identically for the purpose of imposing a tax by valuation upon personalty.

Neither the equal protection clause nor the decisions of this Court interpreting the equality requirement man-

date the identical treatment of corporations and individuals for state taxing purposes.

While the federal constitution vests in the federal government the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, "it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment." *Lawrence et al.* v. *State Tax Commission of State of Mississippi,* 286 U.S. 276, 280 (1932); *Kirtland* v. *Hotchkiss,* 100 U.S. 491 (1879).

The fourteenth amendment does not preclude all classifications, but rather requires that such distinctions be reasonable in light of the objects of the legislation or of the persons affected thereby. *New York Rapid Transit Corp.* v. *City of New York,* 303 U.S. 573, 578 (1938). A state legislature retains broad discretion to classify persons or objects, and such a classification must be upheld under the fourteenth amendment "if any state of facts reasonably can be conceived that would sustain it." *Metropolitan Casualty Company* v. *Brownell,* 294 U.S. 580, 584 (1935); *Rast* v. *Van Deman & Lewis,* 240 U.S. 342 (1916). Legislative distinctions may be narrowly drawn and, if reasonably related to the legislative objective, do not violate the equal protection clause although the distinction may result in practical inequalities. *Magaun* v. *Illinois Trust and Savings Bank,* 170 U.S. 283 (1898); *Carmichael* v. *Southern Coal and Coke Co.,* 301 U.S. 495 (1937). A reasonable statutory classification which bears equally upon all members of the class distinguished satisfies the equal protection guaranty. *Great Atlantic and Pacific Tea Co.* v. *Grosjean,* 301 U.S. 412, 424 (1937).

The states possess perhaps the greatest latitude in promulgating classifications in the field of taxation. *Madden* v. *Commonwealth of Kentucky*, 309 U.S. 83 (1940). As this Court noted in *Carmichael* v. *Southern Coal and Coke Co.*, 301 U.S. 495, 509 (1937):

> "It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. . . . [I]nequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation." (citations omitted).

Accord *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U.S. 232 (1890); *Lawrence* v. *State Tax Commission, supra; Magaun* v. *Illinois Trust and Savings Bank, supra; State Board of Tax Commissioners* v. *Jackson*, 283 U.S. 527 (1931).

Such a statutory classification is presumed to be constitutional. This presumption may be overcome only upon the most explicit proof that the challenged classification is an unreasonable and oppressive discrimination against particular persons or classes. *Madden* v. *Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940). The person attacking the classification bears the burden of negating every conceivable basis supportive of the classification. *Madden* v. *Commonwealth of Kentucky, supra; Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).

In the decision below, the Supreme Court of Illinois misapplied these standards to Article IX-A of the 1870 Illinois Constitution and concluded that the classification of corporations differently from individuals for the purpose of imposing a tax by valuation on personal property violated the equal protection clause of the fourteenth amendment.

The court premised its holding on the basic assumption that "When classifications are reasonable, it is because of differences in the nature of property or in the use to which it is put. The nature of the tax is important, too, for what may be a reasonable classification for a license, or for a privilege tax, is not necessarily a reasonable classification for a property tax." (49 Ill. 2d at 149-150).

The court found that "The new article classifies personal property for the purpose of imposing a property tax by valuation, upon a basis that does not depend upon any characteristics of the property that is taxed, or upon the use to which it is put, but solely upon the ownership of the property." (49 Ill. 2d at 148). Upon this reasoning, the court found the statutory classification irrational.

This decision is deficient in three respects: it totally ignores the legislative objective in abolishing the personal property tax as to individuals; it treats the classes differentiated in a superficial and highly simplistic manner; and it rests upon an incorrect premise that ownership alone may never be a valid basis of classification for the purpose of property taxation.

Unlike many cases, the legislature clearly expressed its intent in adopting Article IX-A for submission to the Illinois electorate for approval. Included with the proposed constitutional amendment was an explanation of the amendment[3] as well as detailed arguments in favor of as well

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3. "The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX-A, thus set-

as against the adoption of Article IX-A. The basic purpose of the Article was to eliminate individual personal property tax in Illinois—a tax which even the opponents of Article IX-A admit is discriminatory, unfair, almost impossible to administer and economically unsound.

> "Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts, and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc." (Arguments In Favor Of The Proposed Amendment)[4]

These arguments in support of eliminating the individual tax are not equally applicable to corporations which are readily identifiable due to mandatory registration of corporations with the State. Ill. Rev. Stat. 1969, Ch. 32, §§ 157.11 (domestic corporations); 157.109 (foreign corporations). Unlike individuals, corporations incorporated within Illinois or doing business within the State are readily identifiable for purposes of tax assessment and collection. The tax is uniformly enforceable as to corpora-

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ting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations."

4. The odious nature of the individual tax is best exemplified by the fact that Article IX-A was adopted by an overwhelming majority of the Illinois electorate despite the fact that the consequent loss of approximately $140,000,000 in revenue would necessarily result in other forms of individual tax increases.

tions since those businesses incorporated under the laws of Illinois may be subject to involuntary dissolution for failure to properly list property subject to the tax. See Ill. Rev. Stat. 1969, Ch. 32, § 157.82; Ill. Rev. Stat. 1969, ch. 120, § 536; *People* v. *Blue Rose Oil Co.*, 360 Ill. 397 (1935), *cert. den*, 296 U.S. 605.

A secondary purpose in submitting Article IX-A to the electorate was to encourage the delegates to the state constitutional convention which was then in session to revise the system of taxation then existing in Illinois by providing a fair, equitable, and administratively sound tax structure.

Subsequent to the adoption of Article IX-A, the delegates in fact did revise the revenue structure in Illinois. The delegates apparently viewed the passage of Article IX-A as merely the first step in totally eliminating the ad valorem personal property tax in Illinois by 1979. See Ill. Const. 1970, Art. IX, sect. 5(b) (c).

Thus, the basic purpose underlying the classification established by Article IX-A was to begin the elimination of all ad valorem taxation on personalty by initially excluding from the classification of those persons required to pay the tax the group upon whom the tax in practice fell most unfairly. It was financially impossible to totally abolish the tax immediately. The legislative action of gradual abolition by the elimination of reasonably defined classes from liability to pay the tax is certainly rational and is not constitutionally impermissible. "The Constitution is satisfied if a legislature responds to the practical living facts with which it deals. Through what precise points in a field of many competing pressures a legislature might most suitably have drawn its lines is not a question for judicial reexamination. It is enough to satisfy

the Constitution that in drawing them the principle of reason has not been disregarded. . . ." *McGowan* v. *Maryland*, 366 U.S. 420, 459 (1961) (concurring opinion of Mr. Justice Frankfurter).

The treatment of the Article IX-A classification of individuals and corporations by the court below is highly superficial. The court appears to rely solely upon the label "individual" or "corporation" without regard to the underlying characteristics which identify and indeed, differentiate the entities. The court with great facility states that for the purpose of property taxation, "the identity of the owner is a neutral consideration". (49 Ill. 2d at 151). This completely ignores the fact that the identity of a corporate owner necessarily encompasses the owner's status as an entity created by the state which enjoys the advantages inherent in conducting business in the corporate capacity, which advantages are unavailable to individuals, partnerships, associations and the like. As this Court has noted, the advantages of conducting business in the corporate form are obvious.

> "The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships." *Flint* v. *Stone Tracy Co.*, 220 U.S. 107 (1911).

And see *Quaker City Cab Co.* v. *Commonwealth of Pennsylvania*, 277 U.S. 389, 403, 409 (1928) (Mr. Justice Brandeis, dissenting). To ignore totally these characteristics which serve to identify a corporate owner and to

clearly distinguish him from individual owners of property would prohibit any classification on the basis of corporate-individual distinctions. Such a result is clearly contrary to decisions of this Court and of the Supreme Court of Illinois upholding legislation which separately classifies individuals and corporations for purposes of taxation. See e.g. *Lawrence* v. *State Tax Commission*, 286 U.S. 276 (1932) (upholding exemption of corporate income derived from out-of-state activities for state income tax purposes); *Home Insurance Company* v. *New York*, 134 U.S. 594 (1890) (upholding the corporate franchise tax); *Thorpe* v. *Mahin*, 43 Ill. 2d 36 (1969) (upholding a higher rate of taxation for corporations than for individuals for state income tax purposes.)

The most severe flaw in the decision below, however, is the invalidity of the basic assumption upon which that decision rests. The premise that a classification for purposes of property taxation may never be based upon the ownership of the property is simply erroneous.

In *Allied Stores of Ohio*, Inc. v. *Bowers*, 358 U.S. 522 (1959), this Court upheld a statutory classification based solely upon ownership of property over an equal protection challenge. Ohio by statute exempted from ad valorem taxation "merchandise or agricultural products belonging to a nonresident if held in a storage warehouse for storage only". (358 U.S. at 522-23). This statute was challenged by an Ohio resident corporation on the ground that the exemption from taxation of nonresident owners violated the equal protection clause since resident owners of property held in a storage warehouse for storage only were required to pay the ad valorem tax on the stored property. Reiterating the broad latitude accorded the states in devising their fiscal systems to insure revenue and to foster their local interests, this Court found that

the fact that "a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy." (358 U.S. at 528). The Court found that the statutory exemption encouraged the location of industry within the state and therefore was not an arbitrary classification violative of the equal protection clause. In conclusion this Court stated:

> "Here the discrimination against residents is not invidious nor palpably arbitrary because, as shown, it rests not upon the 'different residence of the owner,' but upon a state of facts that reasonably can be conceived to constitute a distinction, or difference in state policy, which the State is not prohibited from separately classifying for purposes of taxation by the Equal Protection Clause of the Fourteenth Amendment." (358 U.S. at 530).

And similarly, classifications based upon corporate or individual ownership of property have been upheld by this Court as reasonable under the equal protection clause.

In *Flint* v. *Stone Tracy Co.*, 220 U.S. 107 (1911), this Court upheld a federal statute imposing a one per cent excise tax on net income over $5,000 of corporations and joint stock companies (which the Court found had attributes similar to corporations and enjoyed many similar privileges) organized under federal or state law. The tax applied to all income whether or not derived from property used in business. Although individuals and partnerships were not subject to a similar tax, this Court upheld the statute as a reasonable and legitimate exaction laid upon the privilege of conducting business in the corporate capacity.

While the fourteenth amendment was inapplicable in determining the validity of the federal statute questioned

in *Flint,* this Court did note the real and substantial differences between conducting business in the corporate form and in one's capacity as an individual.

> "The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals." (220 U.S. at 161-62).[5]

An Arkansas statute which taxed domestic corporations upon stock owned in other domestic corporations but which did not tax unincorporated shareholders was

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5. Apart from this apparent recognition of the inherent differences between individuals and corporations for purposes of classification under the fourteenth amendment, the opinion in Flint is particularly noteworthy for its discussion of the validity of a federal tax statute challenged under Article I, sect. 9, clause 4 of the federal constitution requiring a capitation or direct tax to be imposed in proportion to the population. That constitutional provision prohibits congress from imposing taxes upon property solely by reason of its ownership. See Pollock v. Farmers' Loan & T. Co., 157 U.S. 429 (1895); Knowlton v. Moore, 178 U.S. 41 (1900). The Court found that the statute in Flint did not violate the prohibition of such direct taxes since it was a true excise tax within the category of indirect taxation authorized by Article I, sect. 8, clause 1.

It appears that the Supreme Court of Illinois applied the rule limiting the power to impose direct property taxes solely upon the basis of ownership to test the validity of Article IX-A of the 1870 Illinois Constitution. This limitation by its express terms relates only to the power of Congress to levy such taxes. It has no application to state tax legislation.

upheld in *Ft. Smith Lumber Company* v. *Arkansas,* 251 U.S. 532 (1920). As in the instant case, the tax in *Ft. Smith* was imposed upon personalty owned by a corporation as distinguished from that owned by an individual. This Court stated:

> "A discrimination between corporations and individuals with regard to a tax like this cannot be pronounced arbitrary, although we may not know the precise ground of policy that led the State to insert the distinction in the law." (251 U.S. at 534).

The statute was upheld without the strong showing of legitimate legislative policy present herein.

And in *Lawrence* v. *State Tax Commission,* 286 U.S. 276 (1932), this Court upheld a Mississippi statute exempting from taxation income earned by corporations from activities carried on outside the state. The exemption was challenged by an individual businessman to whom the exemption was inapplicable upon the basis that the statute violated the equal protection clause.

In upholding this discrimination between corporations and individuals, this Court made several observations which are equally applicable to the present case.

First, the states are not compelled by the Constitution to impose particular modes of taxation. Apart from the taxing power reserved to the federal government, the states are unrestricted in their power to impose reasonable taxes upon domiciliaries owning property within the state or enjoying privileges granted by the state.

Second, in passing upon the constitutionality of such legislation, the controlling factor is the practical operation of the statute and not whether the tax imposed thereby is defined as a property tax or an excise tax.

And third, there is no constitutional requirement that a particular mode of state taxation must be uniform in its application to individuals and to corporations.[6]

In light of these observations, the ruling of the court below in this case was clearly erroneous.

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6. In the interim period between the decision in Ft. Smith Lumber Co. and the decision in Lawrence, this Court decided Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U.S. 389 (1928). As Mr. Justice Brandeis points out in his dissenting opinion in Quaker City, the Court's decision in that case appears to be directly contrary to its holding in Ft. Smith. The holding is likewise inconsistent with the subsequent opinion in Lawrence.

In Quaker City, the Court declared a Pennsylvania statute imposing a tax upon the gross receipts of corporations engaged in the business of transporting passengers within the state unconstitutional under the equal protection clause. The holding was based solely upon the fact that natural persons and partnerships engaged in the same business were not subject to the tax.

As Mr. Justice Brandeis notes, there are real and substantial differences between conducting a business in a corporate capacity and conducting the same business as an individual.

> "Since a state is permitted to impose upon the corporation more than a pro rata share of the common burden of taxation, I find nothing in the Federal Constitution which prohibits it from adopting any of the familiar kinds of taxes as the means of the heavier imposition." (277 U.S. at 408).

The holding in Quaker City is inconsistent with both prior and subsequent decisions of this Court upon the identical issue and does not constitute authority supportive of the holding of the court below in the instant case.

Article IX-A was adopted by the state legislature and approved by an overwhelming majority of the state electorate as a means of implementing a valid state policy—to abolish a highly discriminatory tax on personalty. Since the tax could not immediately be eliminated without dire financial consequences, the legislature chose initially to exempt the class of persons upon whom the tax fell most unfairly. This was merely the first step in totally eliminating the tax in Illinois by 1979. It is a reasonable and non-arbitrary method of implementing a valid legislative objective.

The classification of individuals differently from corporations for this purpose is reasonable because individuals and corporations are inherently different. The equal protection clause does not require things different in fact to be treated in law as though they were the same. *Tigner* v. *Texas*, 310 U.S. 141 (1940). Additionally, it must be noted that in practice, the tax on personalty is uniformly enforced against corporations while there was wide disparity in the enforcement of the tax on individuals. The classification is clearly drawn and operates uniformly upon the members of each class: individuals are totally exempt; corporations are not.

This Court long has recognized the validity of such classifications between corporate and individual owners of property for purposes of state taxation. It is irrelevant whether the particular tax is defined as a property tax or a franchise tax. The classification imposed by Article IX-A comports fully with the requirements of the equal protection clause and must be upheld.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Court to reverse the decision of the Supreme Court of Illinois in this case.

Respectfully submitted,

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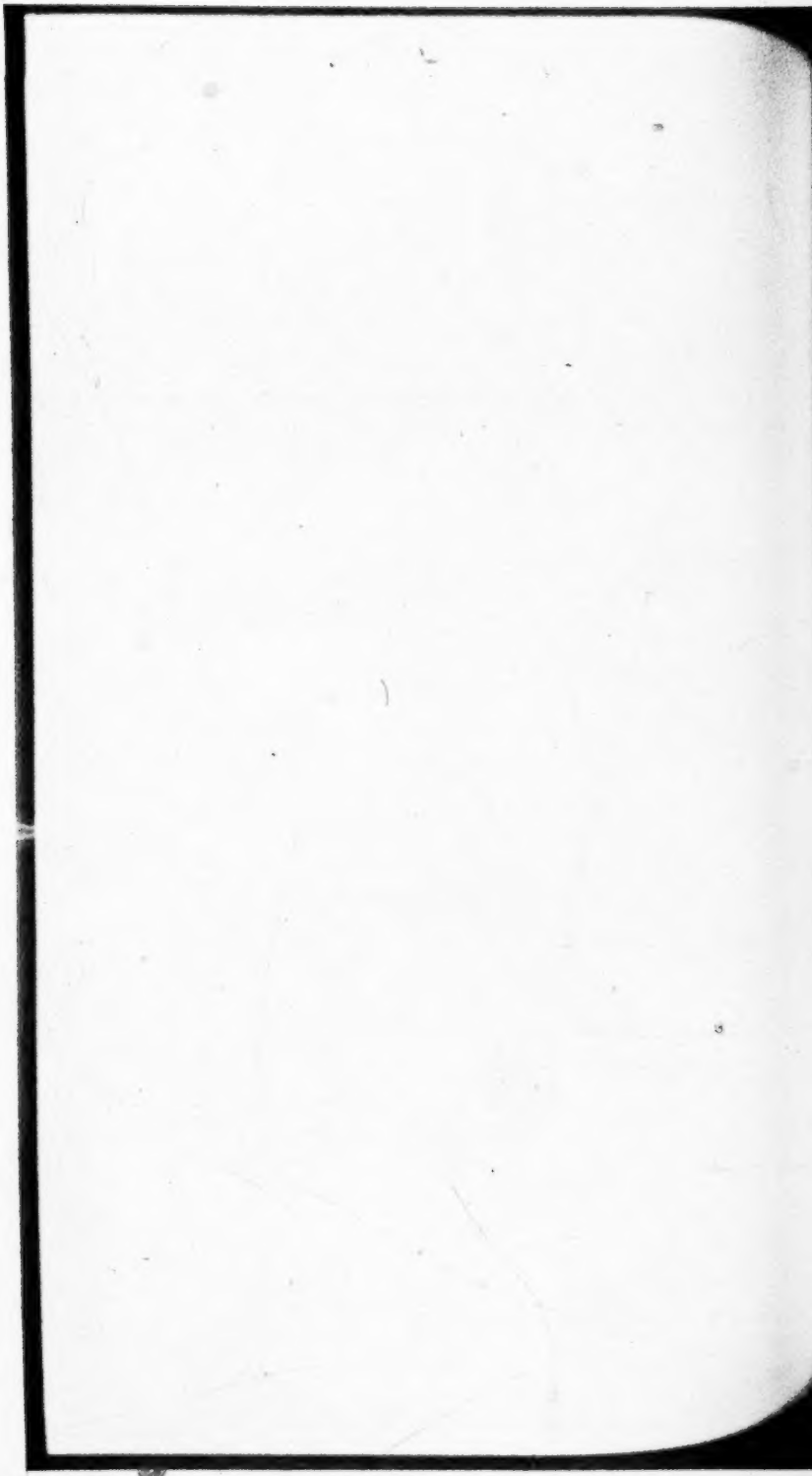

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On Writ Of Certiorari To The Supreme Court Of Illinois.

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